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6 **BEFORE THE**
7 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. PT-2009-4322

11 **XENIA JANE ELMIDO**
12 **1756 Andrews Circle**
13 **Suisun, CA 94585**
14 **Psychiatric Technician License No. PT**
15 **31654**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

16 Respondent.

17 FINDINGS OF FACT

18 1. On or about January 12, 2011, Complainant Teresa Bello-Jones, J.D., M.S.N., R.N.,
19 in her official capacity as the Executive Officer of the Board of Vocational Nursing and
20 Psychiatric Technicians, Department of Consumer Affairs, filed Accusation No. PT-2009-4322
21 against Xenia Jane Elmido ("Respondent") before the Board of Vocational Nursing and
22 Psychiatric Technicians. (Accusation attached as Exhibit A.)

23 2. On or about April 17, 2003, the Board of Vocational Nursing and Psychiatric
24 Technicians ("Board") issued Psychiatric Technician License No. PT 31654 to Respondent. The
25 Psychiatric Technician License expired on August 31, 2010, and has not been renewed.

26 3. On or about January 12, 2011, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. PT-2009-4322, Statement to Respondent, Notice of Defense,
28 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,

1 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
2 Code section 136 and/or agency specific statute or regulation, is required to be reported and
3 maintained with the Board, which was and is:

4 1756 Andrews Circle
5 Suisun, CA 94585.

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
8 124.

9 5. On or about February 9, 2011, the aforementioned documents were returned by the
10 U.S. Postal Service marked "Attempted – Not Known" with Respondent's address crossed off on
11 the envelope.

12 6. Government Code section 11506 states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
15 accusation not expressly admitted. Failure to file a notice of defense shall constitute a
16 waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless
17 grant a hearing.

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
19 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. PT-
20 2009-4322.

21 8. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at the
23 hearing, the agency may take action based upon the respondent's express admissions or
24 upon other evidence and affidavits may be used as evidence without any notice to
25 respondent.

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. PT-2009-4322,

1 finds that the charges and allegations in Accusation No. PT-2009-4322, are separately and
2 severally, found to be true and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Enforcement
5 is \$1,392.50 as of February 22, 2011.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Xenia Jane Elmido has subjected
8 her Psychiatric Technician License No. PT 31654 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Board of Vocational Nursing and Psychiatric Technicians is authorized to revoke
11 Respondent's Psychiatric Technician License based upon the following violations alleged in the
12 Accusation, all of which are supported by the evidence contained in the concurrently submitted
13 Default Decision Investigatory Evidence Packet in this case. Said causes for discipline include:

14 • Unprofessional Conduct in failing to adhere to the ethical standards of practice
15 for a Psychiatric Technician, in violation of section 4521, subdivision (a) of the Business and
16 Professions Code.

17 • Unprofessional Conduct in failing to maintain professional boundaries with a
18 patient at Napa State Hospital, in violation of section 4521, subdivision (a) of the Business and
19 Professions Code.

20 • Unprofessional Conduct in disregarding Napa State Hospital Administrative
21 Directive No. 437 (breach in security), in violation of section 4521, subdivision (a) of the
22 Business and Professions Code.

23 • Unprofessional Conduct in disregarding Napa State Hospital Administrative
24 Directive No. 293 (maintaining a smoke free environment), in violation of section 4521,
25 subdivision (a) of the Business and Professions Code.

26 • Failure to notify the Board of her change in address as mandated by California
27 Code of Regulations, title 16, section 2564.

1
2 ORDER

3 IT IS SO ORDERED that Psychiatric Technician License No. PT 31654, heretofore issued
4 to Respondent Xenia Jane Elmido, is revoked.

5 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
6 written motion requesting that the Decision be vacated and stating the grounds relied on within
7 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
8 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

9 This Decision shall become effective on May 26, 2011.

10 It is so ORDERED April 26, 2011

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13 FOR THE BOARD OF VOCATIONAL NURSING
14 AND PSYCHIATRIC TECHNICIANS
15 DEPARTMENT OF CONSUMER AFFAIRS

16 Attachment - Exhibit A: Accusation
17 DOJ Matter ID:SF2010202857
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Exhibit A

Accusation – PT 2009-4322

JAN 12 2011

**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. PT-2009-4322

XENIA JANE POBRE ELMIDO
1756 Andrews Circle
Suisun, CA 94585
Psychiatric Technician License No. 31654

ACCUSATION

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about April 17, 2003, the Board of Vocational Nursing and Psychiatric Technicians issued Psychiatric Technician License Number 31654 to Xenia Jane Pobre Elmido ("Respondent"). The Psychiatric Technician License expired on August 31, 2010, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4520 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensed psychiatric technician for any reason provided in Article 3 (commencing with section 4520) of the Psychiatric Technicians Law (Code § 4500, et. seq.)

5. Code section 118, subdivision (b), provides in relevant part that the expiration of a license issued by a board "shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

STATUTORY AND REGULATORY PROVISIONS

6. Section 4521, subdivision (a) of the Code provides that the Board may suspend or revoke a license issued under [the Psychiatric Technicians Law (Bus. & Prof Code, 4500, et seq.)] for unprofessional conduct.

7. California Code of Regulations ("Regulations"), title 16, section 2576.6 provides that:

"(a) A licensed psychiatric technician shall safeguard patients'/clients' health and safety . . .

. . .

"(b) A licensed psychiatric technician shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:

. . .

"(3) Maintaining professional boundaries with patient/client.

. . .

1 “(c) A violation of this section constitutes unprofessional conduct for purposes of
2 initiating disciplinary action.”

3 8. Regulation section 2564 provides that “[a]ll persons holding a license from the Board
4 shall file their current mailing address with the Board at its office in Sacramento, and shall
5 immediately notify the Board of any and all changes in mailing address, within 30 days after the
6 change, giving both their old and new addresses and license number.”

7 STATEMENT OF FACTS

8 9. At all relevant times herein, Respondent was employed as a psychiatric technician at
9 Napa State Hospital (“NSH”), and assigned to Unit T-8.

10 10. On or before January 30, 2010, Respondent in exchange for \$200, purchased and/or
11 delivered a cell phone to Patient A, who was housed in Unit T-8. Possession of cells phones by
12 patients in Unit T-8 was prohibited at NSH.

13 11. Respondent from January 30 up to February 1, 2010, telephoned and sent text
14 messages to Patient A on the cell phone she had purchased and/or gave to him and received text
15 messages from Patient A.

16 12. Respondent also purchased tobacco for Patient A, a prohibited substance pursuant to
17 NSH rules and regulations. Respondent then shared in the profits of Patient A’s sale of tobacco
18 to other patients.

19 13. On or about May 27, 2010, the Board sent a letter to Respondent at her address of
20 record with the Board. The letter was returned as undelivered on June 16, 2010, with no known
21 forwarding address for Respondent.

22 FIRST CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct – Failure to Adhere to Ethical Standards of Practice)

24 14. Respondent is subject to disciplinary action under Code section 4521, subdivision (a),
25 in that she engaged in unprofessional conduct by failing to adhere to the ethical standards of
26 practice and behavior for psychiatric technicians as set forth in subdivision (a) of Regulation
27 2576.6. Included in such unprofessional conduct was Respondent’s purchasing and/or providing
28 contraband to Patient A (cell phone and tobacco); obtaining remuneration for delivery of a cell

1 phone to Patient A and profiting in Patient A's re-sale of tobacco to patients at NSH; and
2 engaging in prohibited communication with Patient A (telephone calls and text messaging), as set
3 forth above in paragraphs 9 through 12.

4 SECOND CAUSE FOR DISCIPLINE

5 (Unprofessional Conduct – Failure to Maintain Professional Boundaries with Patient)

6 15. Respondent is subject to disciplinary action under Code section 4521, subdivision (a),
7 in that she engaged in unprofessional conduct by failing to maintain professional boundaries with
8 Patient A, as set forth in Regulation 2576.6, subdivision (b)(3). Included in such unprofessional
9 conduct was Respondent's purchasing and/or providing contraband to Patient A (cell phone and
10 tobacco); obtaining remuneration for delivery of a cell phone to Patient A and profiting by Patient
11 A's re-sale of tobacco; and engaging in prohibited communication with Patient A (telephone calls
12 and text messaging), as set forth above in paragraphs 9 through 12.

13 THIRD CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct – Violation of NSH Administrative Directive No. 437)

15 16. Respondent is subject to disciplinary action under Code section 4521, subdivision (a),
16 in that she engaged in unprofessional conduct by violating NSH Administrative Directive No.
17 437, which prohibits staff from taking unethical advantage or gain of an individual at NSH
18 and/or for failing to follow hospital policy that results in a potential or actual security breach.
19 The circumstances in support of this allegation are that Respondent purchased and/or provided
20 contraband to Patient A (cell phone and tobacco); profited from the provision of contraband to
21 Patient A, and engaged in telephone calls and text messaging with Patient A, as set forth above in
22 paragraphs 10 through 12.

23 FOURTH CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct – Violation of NSH Administrative Directive No. 293)

25 17. Respondent is subject to disciplinary action under Code section 4521, subdivision (a),
26 in that she engaged in unprofessional conduct by violating NSH Administrative Directive No.
27 293, which mandates that NSH shall remain a smoke and tobacco free environment. The
28

1 circumstances that give rise to this allegation are that Respondent provided tobacco to Patient A,
2 in violation of NSH Directive No. 293, as set forth above in paragraph 12.

3 FIFTH CAUSE FOR DISCIPLINE

4 (Failure to Timely Notify Board of Change of Address)

5 18. Respondent is subject to disciplinary action in that she failed to notify the Board of
6 her change in address as mandated by Regulation 2564, as set forth above in paragraph 13.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
10 issue a decision:

11 1. Revoking or suspending Psychiatric Technician License Number 31654, issued to
12 Xenia Jane Pobre Elmido.

13 2. Ordering Xenia Jane Elmido to pay the Board of Vocational Nursing and Psychiatric
14 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to
15 Business and Professions Code section 125.3.

16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: January 12, 2011



18 TERESA BELLO-JONES, J.D., M.S.N., R.N.

19 Executive Officer

20 Board of Vocational Nursing and Psychiatric Technicians

21 Department of Consumer Affairs

22 State of California

23 Complainant

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